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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

KRYSTAL RAE RODRIGUEZ,

Defendant and Appellant.

2d Crim. No. B290546
(Super. Ct. No. 2016034693)
(Ventura County)

While under the influence of methamphetamine, Krystal Rae Rodriguez stabbed her unarmed boyfriend, the father of her unborn child. A jury convicted her of assault with a deadly weapon and injuring a cohabitant (Pen. Code, §§ 245, subd. (a)(1), 273.5, subd. (a)¹) plus a weapon use allegation (§ 12022, subd. (b)(1)). She contends that the prosecutor's closing argument was improper and denied her a fair trial. We disagree. The trial court sustained defense objections to two isolated comments during closing argument and instructed the jury to ignore them,

¹ Unlabeled statutory references are to the Penal Code.

curing any prosecutorial error. Even if the curative instructions were inadequate, there was no miscarriage of justice; the evidence was overwhelming. We affirm.

FACTS AND PROCEDURAL HISTORY

Appellant and Raul Espinoza Robles are in a long-term relationship. They had an argument on September 21, 2016. Robles explained at trial that he was trying to dissuade appellant from using drugs that day because she was eight months pregnant with his child. He denied pushing or touching appellant during the argument.

As Robles sat on a sofa, appellant walked over and stabbed him in the thigh after he deflected her attempt to stab his face. Robles described the weapon as a hunting knife with a three or four inch blade. He fled the house bleeding profusely, in pain, and fearing that appellant would attack him again.

Police arrived. In her recorded interaction with officers, appellant was calm, relaxed, and laughing. She denied having any injuries. She said she told Robles to leave. He grabbed her arm and pushed her a little bit, but did not strike her. They sat down to eat and watch television. Appellant said she took “[a] little knife” or a boxcutter and stabbed Robles, who was “talking shit . . . [a]nd I told him ten times to leave.” When police asked why she stabbed him, she replied, “[be]cause he got me mad,” she was frustrated that he would not leave, and “[h]e disrespects me.” She did not say that she was fearful or defending herself; on the contrary, she told officers she invited Robles into the house when he was outside calling 911 to report the attack.

Robles described appellant as “a very violent person.” He bailed her out of jail when she was charged with arson in March 2016. Appellant confessed to burning the home of a lover who

fathered one of her six children, after he evicted her. She wanted to hurt him. She tried to run him over with her car; when that failed, she burned down his home. She was out on bail for the arson when she stabbed Robles.

Appellant testified that she and Robles have sex in return for his providing money, food, clothes, and drugs. His financial support allowed her to stop engaging in prostitution. Robles averred that he supports appellant because he loves her.

According to appellant, Robles was angry on the day of the stabbing because she refused to have sex. He grabbed her wrist and pushed her. She quickly broke free by pulling her arm back. After he sat down, she stabbed him. She discarded the weapon to hide it from police, and told a relative that police were coming because she stabbed Robles. She admitted that she was high on methamphetamine, which she ingested a few hours before the stabbing.

Appellant did not tell police she was scared of Robles because she did not want “to look like a coward,” but she told the jury that she acted in self-defense. However, when Robles was in the street following her attack, she admittedly invited him to come back inside the house. She stated that Robles was not violent: he never choked or punched her, nor did he threaten to hurt, strike, or kill her on the day of the crime. He was seated and unarmed when she stabbed him.

Since the stabbing, appellant remains close to Robles, who has custody of her daughter. He gives her money to use at the jail commissary, and gives money to other inmates, at her request, to enhance her popularity in jail. Robles brought a notary public to the jail with marriage documents, which

appellant signed. She agreed to marry him “[b]ecause of his money” and for the sake of her daughter.

Appellant was charged with assault with a deadly weapon and inflicting corporal injury on a cohabitant. (Pen. Code, §§ 245, subd. (a)(1), 273.5, subd. (a).) The information alleged that she was on bail at the time of the offenses; as to count 2, it alleged that she personally used a deadly or dangerous weapon. (*Id.*, §§ 12022.1, subd. (b), 12022, subd. (b)(1).) Appellant admitted to being on bail at the time of the offenses. The jury convicted appellant on both counts and found true her use of a deadly weapon to injure a cohabitant. At a hearing encompassing the arson case and the stabbing, the court sentenced appellant to four years and four months in prison, consisting of three years for arson, one year for inflicting injury on a cohabitant, and four months for using a deadly weapon.

DISCUSSION

Review of Prosecutorial Error

Appellant claims prosecutorial error. A prosecutor has wide latitude to argue the case, if it consists of fair comment on the evidence or states matters within common experience. (*People v. Brown* (2004) 33 Cal.4th 382, 399-400.) Defense counsel must object to improper comments and request an admonition. (*People v. Jablonski* (2006) 37 Cal.4th 774, 835.) On appeal, the defendant must show a reasonable likelihood that the jury applied the comments in an improper manner. (*Ibid.*)

Prosecutorial behavior violates the federal constitution when it ““is sufficiently egregious that it infects the trial with such a degree of unfairness as to render the subsequent conviction a denial of due process”” (*People v. Shazier* (2014) 60 Cal.4th 109, 127; *Darden v. Wainwright* (1986) 477 U.S.

168, 181.) In reviewing whether the trial was unfair, we consider whether the prosecutor misstated the evidence; whether the judge admonished the jury to disregard the comment; and “the prominence of the comment in the context of the entire trial and the weight of the evidence.” (*Hein v. Sullivan* (9th Cir. 2010) 601 F.3d 897, 912-913, citing *Darden* at p. 182.)

Prosecutorial behavior ““that falls short of rendering the trial fundamentally unfair may still constitute misconduct under state law if it involves the use of deceptive or reprehensible methods to persuade the trial court or the jury.”” (*People v. Shazier, supra*, 60 Cal.4th at p. 127.) Reversal is warranted “only if it is reasonably probable the trial outcome was affected” by the misconduct. (*Ibid.*)

The Prosecutor’s Comments on Self-Defense

The prosecutor addressed appellant’s claim of self-defense. With respect to assault, he argued, “There’s no self-defense in this case. She did not have the right to exercise that level of force against the victim for any reason, especially not in this case” As to injury on a cohabitant, the prosecutor said, “when you look at what happened, based on even the defendant’s own admission, even giving her the benefit of the doubt that what she was saying was true, she still by her own admission did not have the right to use self-defense.” During rebuttal, the prosecutor questioned appellant’s veracity, given her testimony that Robles was never violent and she was not in fear of him. He argued, “Ladies and gentlemen, this is not a case of self-defense at all. Because she was not entitled to use self-defense. *If she was entitled to self-defense, you wouldn’t be here.*” (Italics added.)

Defense counsel promptly objected to the comment as “vouching” and requested an admonition. The court told the jury,

“Folks, you can’t consider that last comment as legitimate argument. Counsel is not supposed to vouch for what somebody in the case did. That would be the law enforcement in this case.” The prosecutor continued his rebuttal, noting that appellant “never told anyone it was self-defense. She never told anyone that she was in fear of imminent harm . . . [or] about to get injured. Instead, she said he made me mad so I stabbed him. It’s not self-defense. It’s not reasonable.”

Outside the jury’s presence, defense counsel observed that the court sustained his objection and gave an admonishment. The court asked if this was sufficient. Defense counsel replied, “It’s a quick objection. Quick curative. I’m satisfied. I’m not asking for a mistrial.”

The prosecutor did not personally vouch for a witness by giving the jury assurances that measures were taken to ensure the witness’s veracity at trial. (*People v. Stewart* (2004) 33 Cal.4th 425, 499.) Seen in the context of the prosecutor’s entire argument on self-defense, his point was not that law enforcement has inherently greater veracity. Instead, the prosecutor was stressing, perhaps inartfully, that appellant never told police she was defending herself from Robles; they arrested her after she justified the stabbing by saying she was mad, frustrated with Robles’s refusal to leave and his disrespectful words. This was not vouching for law enforcement. It was a comment on the state of the evidence. The prosecutor’s expressions of belief that the defendant is guilty or lying are not improper if it is clear that this belief is based on evidence before the jury, not on information outside the record. (*People v. Mayfield* (1997) 14 Cal.4th 668, 781-782, disapproved on other grounds in *People v. Scott* (2015) 61 Cal.4th 363, 390, fn. 2.)

The trial court has discretion to decide whether any prejudice can be cured by admonition or instruction. (*People v. Collins* (2010) 49 Cal.4th 175, 198.) Here, the court advised jurors that the comment about appellant's right to claim self-defense was not legitimate and admonished them to disregard it. "We presume the jury heeded the admonition and that any error was cured." (*People v. Dickey* (2005) 35 Cal.4th 884, 914 [after the prosecutor vouched for the credibility of a witness, the court cured the error by telling the jury that it was "improper argument" and "[y]ou are to ignore that statement, please"].)

Defense counsel declared himself satisfied with the admonition, did not claim prejudice, and declined to seek a mistrial. The prosecutor's "brief and isolated" remark was not prejudicial, in the context of an otherwise proper argument regarding self-defense. (*People v. Dement* (2011) 53 Cal.4th 1, 40, disapproved on other grounds in *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.) The admonishment was reinforced with jury instructions that the attorneys' closing arguments "are not evidence."

The Prosecutor Did Not Misstate the Reasonable Doubt Standard

The prosecutor argued, "the defendant does have the presumption of innocence but when she takes the stand, she does not have the presumption of truthfulness" and "until all the evidence is presented until the jury makes their determination, she is presumed innocent until proven guilty beyond a reasonable doubt." After a few more observations, the prosecutor said, "*Reasonable doubt does not mean giving the benefit of the doubt to someone. It has to be a reasonable doubt.*" (Italics added.)

The court sustained a defense objection to the italicized statement and told the panel it “was an improper statement of the law.” The prosecutor then clarified that the jurors should ask themselves, “Do I have a doubt? And is that doubt reasonable?” Outside the jury’s presence, the court asked if defense counsel was satisfied. He replied that equating reasonable doubt to benefit of the doubt “can be prejudicial And it should not have been told the jury. There was a curative.”

The prosecutor informed the jury that the standard for a conviction is proof beyond a reasonable doubt, which was bolstered by reasonable doubt instructions given before and after the jurors heard the evidence. The prosecutor’s fleeting allusion to a “benefit of the doubt” theory did not deprive appellant of a fair trial. Defense counsel’s objection was promptly sustained and the panel was admonished that this theory misstates the law. Under the circumstances, there is “no reasonable likelihood the jury construed the prosecutor’s remarks [urging them not to give the defendant the benefit of the doubt] as properly suggesting that the burden of proof was not guilt beyond a reasonable doubt.” (*People v. Edwards* (2013) 57 Cal.4th 658, 741-742.)

The Evidence Against Appellant Was Overwhelming

Reviewing courts cannot reverse a judgment absent a clear miscarriage of justice. (*People v. Hill* (1998) 17 Cal.4th 800, 844.) Even if the prosecutor made two improper comments during argument, they did not prejudice appellant’s right to a fair trial. The purported errors, if any, were cured by a prompt admonition, and were harmless beyond a reasonable doubt given the overwhelming evidence of appellant’s guilt.

Appellant told police that she stabbed Robles because she was angry, not because he threatened to harm her. He was stabbed while seated, unarmed, and watching television. After the stabbing, she invited Robles back to the house. She agreed to marry Robles while the trial was pending. There was no miscarriage of justice. (Cal. Const., art. VI, § 13.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Rocky J. Baio, Judge

Superior Court County of Ventura

Scott H. Bentley, under appointment by the Court of
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